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COMPENSATION COMMISSION
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REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING PART TWO OF THE FOURTH INSTALMENT OF INDIVIDUAL CLAIMS FOR DAMAGES ABOVE US$100,000 (CATEGORY "D" CLAIMS)

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CONTENTS

	Paragraphs	Page
Introduction	1 - 4	3
I. BACKGROUND	5 - 8	3
A. Background information	5 - 6	3
B. General legal framework	7	4
C. Applicable evidentiary standard	8	4
II. D7 CLAIMS	9 - 28	4
A. Claim form requirements	9 - 12	4
B. Description of D7 claims in part two of the fourth instalment	13 - 25	5
C. Procedural history	26 - 28	6
III. D7 METHODOLOGY	29 - 67	7
A. Ownership, loss and causation test	29	7
1. Ownership	30 - 33	7
2. Loss and causation	34 - 38	8
B. Compensation methodology	39 - 44	9
1. Adjustment process	45 - 46	10
2. Assessment process	47 - 51	11
3. Valuation process	52 - 67	12
(a) Claims for estimated and actual cost of repair	53 - 59	12
(b) Claims for loss of rental income and loss of anticipated rental income	60 - 63	14
(c) "Other" losses	64 - 66	14
(d) Calculation of recommended amounts	67	15
IV. CROSS-CATEGORY ISSUES	68 - 71	15
V. RECOMMENDATIONS	72 - 75	16
A. Recommended compensation	72	16
B. Interest and exchange rates	73 - 74	16
C. Submission through the Executive Secretary to the Governing Council	75	16
Notes		17

Introduction

1. This is the eighth report to the Governing Council of the United Nations Compensation Commission (the "Commission") submitted pursuant to article 38(e) of the Provisional Rules for Claims Procedure (the "Rules"), by the "D1" Panel of Commissioners (the "Panel"), being one of two Panels appointed to review individual claims for damages above US$100,000 (category "D" claims). 1/ This report contains the determinations and recommendations of the Panel in respect of part two of the fourth instalment, comprising 200 of the 1,050 category "D" claims in the fourth instalment, submitted to the Panel by the Executive Secretary of the Commission pursuant to article 32 of the Rules on 26 January 1999. 2/

2. Part two of the fourth instalment comprises 200 claims for real property losses ("D7 claims") only, submitted by the Government of Kuwait. There are approximately 2,800 D7 claims in category "D". Ninety-five per cent of the D7 claims were submitted by the Government of Kuwait. For that reason the Panel has developed a methodology to apply to the Kuwaiti D7 claims only. The remaining 5 per cent of the claims will be subject to a case by case review by the Panel, applying the general principles developed for the Kuwaiti claims, in so far as it is appropriate to do so.

3. The 200 claims were chosen as a representative sample of Kuwaiti D7 claims, and in view of the complex legal and valuation issues involved in resolving them, the Panel designated the 200 claims as "unusually large or complex" pursuant to article 38(d) of the Rules, and has reviewed them within a period of twelve months.

4. The Panel commenced its review of the fourth instalment on 26 January 1999. In addition to regular communications, the Panel met at the Commission's headquarters in Geneva to consider the claims on the following dates: 25-26 January 1999, 22-24 March 1999, 26-27 April 1999, 24-26 May 1999, 18-21 July 1999, 6-8 September 1999, 15-17 November 1999, 20-21 December 1999 and 27-29 January 2000. Members of the Panel also visited Kuwait during 18-21 March 1999. During the visit, they met with a number of Kuwaiti Government officials and obtained information relevant to the resolution of category "D" claims.

I. BACKGROUND

A. Background information

5. The factual background relating to Iraq's invasion and occupation of Kuwait that was taken into account by the Panel in reviewing claims in part two of the fourth instalment is set out in detail in the Panel's First and Second Reports. 3/

6. The Panel has taken into consideration additional relevant material, including information accompanying the submission of these claims provided

by the Executive Secretary pursuant to article 32 of the Rules, and additional information and views presented by Governments that have submitted claims, and by the Government of Iraq, in response to the reports submitted to the Governing Council by the Executive Secretary in accordance with article 16 of the Rules.

B. General legal framework

7. The general legal framework for the resolution of category "D" claims is set out in chapter V of the Panel's First Report.

C. Applicable evidentiary standard

8. The issue of the evidentiary standard to be applied in reviewing category "D" claims was addressed by the Panel in chapter VI of the First Report and chapter II of the Second Report. 4/ The Panel's recommendations in these two reports were approved by the Governing Council in decisions 47 and 49 respectively. 5/ As with previous instalments, the Panel has reviewed the claims in the present instalment and made its recommendations by assessing the documentary and other appropriate evidence as well as balancing the interests of claimants, who had to flee a war zone, with the interests of the Government of Iraq, which is liable only for damage caused as a direct result of its invasion and occupation of Kuwait.

II. D7 CLAIMS

A. Claim form requirements

9. The D7 page of the category "D" claim form provides for three types of real property losses, namely:

(a) Estimated cost of repair work not yet completed;

(b) Actual cost of repair work already completed; and

(c) Other (e.g., loss of rental income).

10. Claimants are required to identify the type of property, the name of the owner as it appears on the title deeds or other instruments of title, the date of purchase and the percentage of the claimant's ownership.

11. In addition, details of the property, including the address, official registration number, age of the structure, and floor space, must be provided. Claimants must also state the estimated value of the property as at 1 August 1990 and the original cost, including improvements.

12. The claim form requires claimants to attach documentary and other appropriate evidence such as proof of ownership, repair costs, copies of rental contracts and to include a sworn statement describing what happened

to the property. Where applicable, mortgage information and documentation should also be provided.

B. Description of D7 claims in part two of the fourth instalment

13. As stated above, the 200 D7 claims in part two of the fourth instalment were filed by the Government of Kuwait which, through its Public Authority for the Assessment of Compensation Resulting from Iraqi Aggression ("PAAC"), assisted claimants in the preparation of claims for all losses.

14. Pursuant to the widespread damage caused to real property in Kuwait as a result of Iraq's invasion and occupation, the claims cover losses in respect of eight types of real property identified to date from the claims reviewed: villas and houses; chalets and beach houses; apartment buildings; shops; offices; factories and warehouses; farm buildings; and garages.

15. Claims have been put forward in respect of physical damage based on estimated or actual cost of repairs. Some claimants had not undertaken repairs to their property at the time of filing their claims and submitted claims based on the estimated cost of undertaking the repairs. Most claimants had carried out the repairs and were able to claim the actual costs incurred.

16. Under the loss type "other", the majority of claimants have claimed for loss of rental income in respect of apartment buildings, which were vacated when tenants left Kuwait. In a number of cases, tenants simply failed to pay rent due to civil disorder. A small number of claims are for loss of anticipated rental income where claimants had either completed the construction of premises, which were not yet occupied, or for buildings that were due to be completed during the period of the occupation.

17. In addition, there are claims under the loss type "other" for contract interruption losses in relation to construction projects that were in progress and interrupted as a result of the invasion. These encompass claims for site restoration costs, stolen materials and equipment, and increased construction costs.

18. As with other loss types in category "D", some D7 claimants have submitted part of their losses for compensation in category "C" and are claiming the remainder in category "D". Other claimants have claimed all their losses in category "D".

19. Many of the properties were owned by more than one person. In that case, either the claimants are claiming solely for losses relating to their own share of the property or, in most cases, they are also claiming on behalf of the other joint owners who have authorised them to do so.

20. Many claimants are claiming for more than one property, and in each case have submitted a separate claim form for each property. Claimants are also claiming for different types of losses in respect of the same property, as in cases where an apartment building that was damaged was the subject of both a claim for estimated or actual cost of repairs and for loss of rental income.

21. Due to the period of time that has elapsed since claimants submitted their claims for estimated cost of repairs, the Panel considered it likely that many of the claimants would by now have completed the repairs, and would have proof of actual costs incurred. Members of the Panel who visited Kuwait found that generally most of the buildings had been restored. In the light of this fact, the Panel instructed the secretariat to write to all claimants who submitted claims for estimated cost of repairs requesting them to provide proof of actual costs incurred, or an explanation as to why the repairs had not been carried out after liberation.

22. Most of the D7 claims have been well substantiated in accordance with guidelines provided by PAAC, and generally have been presented in a systematic way. The majority of claimants have submitted a variety of documents in support of their claims. In addition to personal and witness statements describing what happened to their properties, claimants have submitted evidence of their ownership or leasehold interests in the form of title deeds, sales contracts, Housing Authority Distribution Forms, 6/ copies of loan contracts where claimants were the recipients of government land, 7/ irrevocable powers of attorney, 8/ and lease agreements.

23. During their visit to Kuwait, members of the Panel were informed of the comprehensive system at the Kuwaiti Ministry of Justice for the registration of various ownership interests. The Ministry is able to provide claimants with copies of documents on its files.

24. As the rebuilding work took place after Iraq's invasion and occupation of Kuwait, claimants were able to supply post-invasion documents evidencing their losses. In respect of claims for estimated or actual cost of repairs, claimants submitted estimates, bid proposals, invoices, and contracts in support of claims and loss adjuster's and civil engineer's reports assessing the damage and the reasonableness of the amounts claimed. In addition, some claimants submitted video tapes and photographs depicting the state in which they found their properties upon their return to Kuwait.

25. Claimants submitted rental contracts, rent receipts, and utility bills in support of claims for loss of rental income. Where a claim was made for a number of units in one or several buildings, claimants included rental summaries listing each property and submitted documents in respect of each unit contained in a building.

26. The Panel determined that a claim submitted by an individual in respect of real property owned by a charitable organization should be treated as one submitted by that organization. The claim was therefore transferred to the E4 Team, which is processing Kuwaiti claims submitted by corporations and other legal entities.

C. Procedural history

27. In developing the methodology for resolving D7 Kuwaiti claims, the Panel has applied many of the principles that it adopted for the resolution of D4(Personal Property) claims in its "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the Second Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)". 9/

28. The D7 methodology comprises two parts. Part one is designed to assess the compensability of the claim and part two determines the amount of compensation to be recommended. The first part is the ownership, loss and causation test. If this is established, the second part is the compensation methodology that has four stages:

(a) adjustment;

(b) assessment;

(c) valuation; and

(d) calculation of the recommended amount.

29. The Panel was assisted by expert loss adjusting and accounting consultants in the development of the compensation methodology.

III. D7 METHODOLOGY

A. Ownership, loss and causation test

30. Under the ownership, loss and causation test the claimant is required to prove:

(a) that he or she had an ownership or other proprietary interest in the property that is the subject of the D7 claim;

(b) the loss and/or other damage that gave rise to the claim; and

(c) that such loss and/or damage occurred as a direct result of Iraq's invasion and occupation of Kuwait.

1. Ownership

31. During its mission to Kuwait, members of the Panel learned that the majority of Kuwaiti D7 claims are based on three different types of proprietary interests in real property. They are as follows:

(a) freehold ownership; 10/

(b) ownership interest resulting from the execution of an irrevocable power of attorney, which is a widely used method of transferring ownership in Kuwait; and

(c) leasehold interest in government owned land, upon which the tenant has built chalets, farms or other approved structures. 11/

32. To be eligible for compensation, the claimant must establish that he or she had a proprietary interest in the subject real property, as at 1 August 1990. While many claimants submitted documents that proved their ownership or leasehold interests at the time when they bought the property or first leased it, many did not have documents contemporaneous with Iraq's invasion of Kuwait. A system was therefore devised with PAAC whereby verification of freehold interests and interests under irrevocable powers of attorney could be undertaken through the Kuwaiti Ministry of Justice, and in respect of leasehold interests through the Kuwaiti Ministry of Finance. In the present instalment only in one case did the certification by the Ministry of Justice not support the claim.

33. With respect to the types of evidence deemed sufficient to establish an ownership or leasehold interest, the claimant must provide one or more of the following documents, depending upon the type of interest asserted:

(a) A certified copy of a title deed in respect of freehold ownership;

(b) A certificate issued by the Real Estate Registration and Certification Department of the Ministry of Justice in Kuwait which establishes the fact that the claimant was the owner of the property on or about 1 August 1990;

(c) A certificate issued by the Real Estate Registration and Certification Department of the Ministry of Justice which establishes that the claimant had de facto ownership of the property on or about 1 August 1990 arising from an irrevocable power of attorney executed in favour of the claimant; and

(d) A certified copy of a leasehold agreement between the claimant and the Ministry of Finance in Kuwait or a certificate issued by the Ministry of Finance, which establishes that the claimant was the leaseholder of the property on or about 1 August 1990.

34. The Panel notes that, depending upon the facts presented in a claim, there may be other types of evidence which may be deemed sufficient to establish the requisite proprietary interest in the subject property.

2. Loss and causation

35. The majority of claims arise out of situations where real property was damaged, or claimants could not recover rent. The Panel established separate criteria for loss and causation in respect of claims for estimated or actual cost of repairs, and claims for loss of rental income.

36. With respect to claims for estimated and actual repair costs, the Panel has determined that the fact of loss and direct causation will be considered to have been proved where the claimant provides a personal statement describing the circumstances and nature of the loss and referring to one or more of the circumstances enumerated in paragraph 6 of Governing Council decision 7, 12/ together with one or more of the following types of evidence:

(a) A witness statement that corroborates the claimant's description of the loss suffered;

(b) An invoice, bid/proposal, contract, loss adjuster's report or other similar type of document which refers to the damage for which compensation is being claimed; and

(c) A photograph or video tape showing the damage.

37. In respect of claims for loss of rental income, the claimant must provide a personal statement describing the circumstances and nature of the rental loss, together with one or more of the following documents:

(a) A witness statement that corroborates the loss of rental income claim; and

(b) A rental contract, rental receipt, utility bills or other similar evidence which establishes that the affected property comprised rental units on or about the date of the invasion.

38. The Panel notes that depending upon the facts presented in a claim, there may be other types of evidence that may be deemed sufficient to meet the fact of loss and causation requirement.

39. Once the requisite ownership, loss and causation criteria set by the Panel have been satisfied, the next stage is the application of the compensation methodology, which encompasses the verification and valuation of the claim based on evidence of the quantum of the loss suffered by the claimant.

B. Compensation methodology

40. Based on the number and types of D7 losses claimed, the Panel has categorized claims into the following four main loss elements for purposes of developing the compensation methodology, namely:

(a) Estimated cost of repair work that has not yet been completed ("Estimated cost of repairs").

(b) Actual cost of repair work that has already been completed ("Actual cost of repairs");

(c) Loss of rental income, including loss of anticipated rental income. These claims are assessed on a per unit basis; and

(d) Other.

41. A standard methodology has been developed for claims falling under each of the loss elements (a) to (c) above. Claims falling under item (d), "Other", are to be dealt with on a case by case basis, so far as possible adopting the methodological principles of loss elements (a) to (c) above.

42. As stated in paragraph 21 above, all claimants who have submitted claims for estimated cost of repairs are requested to submit evidence of actual costs incurred. The responses are assessed to ascertain whether the claimant has undertaken the repairs, and if not, the reasons therefor. Where the repairs have been carried out and the costs are equal to or less than the estimated cost of repairs, the claim will be valued using the compensation methodology for actual cost of repairs. Where the claimant has incurred costs higher than those originally estimated, the claim is valued using, in general, the compensation methodology for estimated cost of repairs.

43. The Panel has determined that a substantial discount should be applied in assessing the recommended compensation where claimants fail to respond to requests for proof of actual costs incurred, or provide unsatisfactory explanations.

44. Some claimants submitted evidence that they were unable to carry out repairs as the property was in an area that had not been cleared of land mines and there was a Government of Kuwait prohibition on rebuilding the property. In other cases the property had been sold. In such cases no discount was applied.

45. The compensation methodology comprises four stages:

(a) Adjustment process;

(b) Assessment process;

(c) Valuation process; and

(d) Calculation of the recommended compensation.

1. Adjustment process

46. The first stage in the methodology is to identify errors or omissions in the claim. The adjustment process is concerned only with the data presented in the claim. It ensures that the claimed amount is correctly supported by existing documentation. This analysis identifies adjustments to be made in the following circumstances:

(a) Classification errors where the claimant has incorrectly identified the category of the loss;

(b) Exchange rate variances where an incorrect exchange rate has been applied to an original claimed amount, denominated in currencies other than Kuwaiti dinars ("KD");

(c) Arithmetical errors;

(d) Reconciliation of amounts where amounts detailed in supporting documents differ from the amounts stated on the D7 page; and

(e) Duplicated claims where elements of the claim are duplicated within the D7 claim and/or between the D7 claim and other category "D" loss types and/or between the D7 claim and other claim categories.

47. The resulting figure is known as the "adjusted value". The review undertaken as part of the Adjustment process also allows the identification of missing or additional documentation that may affect the adjusted value during the next stage, which is the "assessment process".

2. Assessment process

48. The assessment process tests the existence and validity of all evidence provided in support of the claim. The Panel has developed specific assessment matrices for each loss element to ensure that all relevant aspects of the claim documentation are considered in the review process. The matrices cover the following loss elements:

(a) Estimated cost of repair;

(b) Actual cost of repair; and

(c) Loss of rental income, including loss of anticipated rental income.

49. Due to the fact that the "Other" loss element covers unspecified claims, no standard assessment matrix has been developed for that loss element. However, the assessment process for claims in the "Other" category reflects, as practically as possible, the assessment processes prescribed for the three specifically defined losses stated above.

50. In its review of the different types of losses, the Panel has determined that certain documents are essential to the analysis and assessment of the claim. The lack of such a document will lead to a deduction factor applied to the adjusted value. Deduction factors for the lack of such documents are all calculated on a pro rata basis depending on the proportion of the amount claimed for which there are no compulsory documents.

51. In addition to the above documents, the Panel has determined that there are other documents, which although not compulsory, serve to further substantiate the claim. The inclusion of these documents will result in an "add back" factor to the adjusted value in all types of claim except for loss of anticipated rent. Add backs can be calculated on either a pro rata or an absolute basis, as appropriate.

52. The total of all negative and positive adjustments gives rise to an assessment score. The assessment score is expressed as a percentage and is to be applied to the adjusted value.

3. Valuation process

53. The valuation process ensures a careful analysis and valuation of the adjusted claim, and allows the application of technical valuation principles to the adjusted value. In all cases, the Valuation score is expressed as a percentage, to be applied to the adjusted value. The steps applied at the valuation stage depend on the type of loss being claimed, as is next shown.

(a) Claims for estimated and actual cost of repair

54. Similar principles apply to the valuation process for both of these types of claim. The purpose of the process is to calculate a value for the claim that reflects the value of the property as at 1 August 1990.

55. In order to determine that value, the Panel was assisted by its expert consultants in the development of benchmark rebuilding costs in Kuwait as at 1 August 1990. The Panel established five benchmark categories representing the substructure, superstructure, internal finishes, fittings and services applicable to each of the eight types of real property as set out at paragraph 14 above. Using data on the cost of materials and labour as at 1 August 1990, and the benchmark categories, the Panel determined the typical rebuilding costs per square metre as at 1 August 1990 for each type of property.

56. As part of the valuation process, the Panel also set parameters for categorizing the nature of the repairs undertaken by the claimant, so as not to compensate for improvements to the property. The Panel established percentage criteria to be applied in determining whether the rebuilding work undertaken by the claimant should be classified as repairs, reconstruction or improvement. For each category of work, an appropriate depreciation factor is applied.

57. The depreciation factors are calculated by taking into account the age of the property as at 1 August 1990 and its estimated useful life. The useful life for each of the eight types of property was established in accordance with the state of the real property market in Kuwait as at 1 August 1990. The useful life of each property varies depending on the type of property. For example, the useful life for leased property is shorter than for property that is owner occupied.

58. In addition to setting benchmark criteria for typical rebuilding costs and depreciation factors, the Panel also determined inflation factors to be applied for purposes of adjusting the costs to reflect the impact of inflation between 1 August 1990 and the date on which the work was actually performed. In the case of estimated cost of repair claims, the date that the work was performed is deemed to be the date of the estimate or supplier/contractor contract.

59. The valuation process provides for a deduction to reflect any improvements to the property, where appropriate.

60. Taking into account the factors stated in paragraphs 54-58 above, the basic stages of the valuation process are as follows:

(a) Stage 1. The August 1990 benchmark rebuilding cost for the property is calculated by multiplying the floor area of the property in square metres by the standard benchmark rate for the type of property;

(b) Stage 2. The adjusted value of the claim is deflated to August 1990 prices by using an inflation rate based on the date of the estimate/payment;

(c) Stage 3. The status of the work carried out is established by dividing the adjusted deflated cost of repair by the benchmark rebuilding cost; and

(d) Stage 4. Where a claimant has not responded to a request for details of actual costs, or not provided satisfactory reasons, the adjusted claim is first deflated to August 1990 prices; it is then subjected to the depreciation factor based on the age of the property; and finally reduced by applying the discount factor to reflect the additional risk.

(b) Claims for loss of rental income and loss of anticipated rental income

61. Similar principles apply to the valuation process for claims for loss of rental income and loss of anticipated rental income. The purpose of the process is to consider the claim on a commercial basis, taking into account the period of the claim, the monthly rental amount and saved/discontinued expenses such as the cost of caretaking, air conditioning and sundry maintenance costs.

62. Saved/discontinued expenses are deducted from the claim. It is assumed that costs of air conditioning, caretaking services, elevator and sundry maintenance expenses would not have been levied or paid during the period for which compensation is being recommended. Where the claimant has not deducted these expenses from the claim, a fixed amount per month will be deducted depending on the number of units in the building.

63. The compensation period is limited to a maximum of 12 months unless the Panel determines that exceptional circumstances exist, for example in the case of large building projects.

64. For claims for loss of anticipated rental income, the date of completion of the building is also taken into consideration when calculating the period of the claim.

(c) "Other" losses

65. The valuation principles applied in such cases reflect the principles of the above specific loss types. Claims for loss of building materials are processed in the same way as claims for actual cost of repairs, but no depreciation is applied as the building materials are considered to have been new as at 1 August 1990.

66. With respect to claims for contract interruption losses, the Panel has had the advantage of examining the principles developed by the category "F3" Panel of Commissioners in its "Report and Recommendations Concerning the First Instalment of "F3" Claims". 13/ At paragraph 62 of that report, the "F3" Panel found that there was a general increase in the price of goods and services in Kuwait due to many factors, the precise effect of which it was impossible to identify. However, it found that price increases could be deemed to have been linked directly to Iraq's invasion and occupation of Kuwait in respect of the following costs:

(a) site restoration costs (including those related to the replacement of materials and equipment taken during Iraq's invasion and occupation of Kuwait and which were needed for the resumption of construction contracts);

(b) additional transportation costs (including double-handling costs); and

(c) additional insurance costs. 14/

67. Being in agreement with the above principles, the Panel therefore determines that claims for price increases relating to the above types of costs are compensable.

(d) Calculation of the recommended compensation

68. In calculating the recommended compensation, all of the steps stated above are followed to arrive at the recommended compensation, showing the adjusted value, the assessment and the valuation scores by loss element, and the final amount of recommended compensation for each D7 page.

IV. CROSS-CATEGORY ISSUES

69. As with D4(PP) claims, the Panel has identified D7 claims where claimants have claimed part of the claim for real property losses in category "C" and the remainder in category "D", which were defined as "spillover" claims in paragraph 53 of the Panel's Fourth Report. With respect to D7 claims, the Panel has identified spillover claims where claimants are seeking separate and distinct losses in category "D" and those where it is not possible to distinguish between what is being claimed in category "C" and what is claimed in category "D".

70. Where the D7 claim is separate and distinct from the C7 claim, the Panel values the D7 claim only. Where it is not possible to distinguish between what is claimed on the C7 page and the D7 page in respect of the same property, the combined C7 and D7 amounts will be subject to the D7 methodology. The assessment and valuation scores thus obtained will then be applied to the D7 claim only to obtain the recommended D7 compensation.

71. The Panel has also identified claims where claimants have duplicated C7 losses claimed in category "C" and D7 losses claimed in category "D". The D7 claim will be assessed to determine the extent to which it duplicates the C7 claim. Where the amount that is duplicated is less than US$100,000.00, the duplicated amount is to be deducted from the D7 claim during the adjustment process and the balance, if any, will be subject to the D7 methodology.

72. Where the amount that is duplicated is greater than US$100,000.00, the D7 methodology is to be applied to the whole of the D7 claim, including the duplicated amount, and the corresponding amount awarded in category "C" is then deducted from the recommended D7 award.

V. RECOMMENDATIONS

A. Recommended compensation

73. As stated previously above, all the 200 D7 claims covered by this report were submitted by the Government of Kuwait. Against the total amount claimed of US$73,437,225.43, the Panel has recommended compensation totalling US$57,659,045.08.

B. Interest and exchange rates

74. The Panel recommends that interest be awarded pursuant to its determinations as set out in paragraphs 64-65 of its First Report.

75. For purposes of calculating recommended amounts, the Panel has converted currencies into United States dollars in accordance with the rates set out in paragraphs 61-63 of the First Report.

C. Submission through the Executive Secretary to the Governing Council

76. The Panel respectfully submits this report pursuant to article 38(e) of the Rules, through the Executive Secretary to the Governing Council.

Geneva, 29 January 2000

(Signed) R.K.P. Shankardass
Chairman

(Signed) H.M. Joko-Smart
Commissioner

(Signed) M. C. Pryles
Commissioner

Notes

1/ S/AC.26/1992/10.

2/ The "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the Fourth Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1999/21) was approved by the Governing Council in December 1999 pursuant to Governing Council Decision S/AC.26/Dec.81 (1999)

3/ See in particular chapter II of the "Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the First Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1998/1) ("First Report") and chapter IV of the "Report and Recommendations Made by the Panel of Commissioners Concerning Part Two of the First Instalment of Individual Claims for Damages Above US$100,000 (Category "D" Claims)" (S/AC.26/1998/3) ("Second Report").

4/ See also paragraph 8 of Governing Council decision 7 (S/AC.26/1991/7/Rev.1) which provides that "[s]ince ... [D] claims may be for substantial amounts, they must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss". See also articles 35(2) and (3) of the Rules.

5/ S/AC.26/Dec.47 (1998) and S/AC.26/Dec.49 (1998).

6/ Housing Authority Distribution Forms provide details of a property conveyance by the Kuwaiti Housing Authority to a citizen of Kuwait.

7/ Loan contracts are issued by a bank in respect of interest-free loans to Kuwaiti citizens, who are recipients of government land, for the specific purpose of building a residence on that land.

8/ An irrevocable power of attorney permits the transfer of legal control of real estate, tantamount in many respects to a transfer of legal ownership, without a corresponding change in nominal title to the property. The effect of an irrevocable power of attorney is that, upon its execution, the ownership interest in the property described in the instrument is deemed to be immediately vested in the named beneficiary. Although the ownership rights resulting from the execution of an irrevocable power of attorney are not as unequivocal as a registered conveyance, it is nonetheless a widely accepted customary practice in Kuwait.

9/ S/AC.26/1998/15 ("Fourth Report").

10/ With respect to privately owned (freehold) real property, Kuwait's ownership verification process is based on a registration system. The Kuwaitis use the "Torrens" system, named after Richard Robert Torrens. This system is based on the use of a certificate of title, a document issued by an official of state or local government, which states the identity of the owner(s) of the title. All privately owned property is registered with the Real Estate Registration and Certification Department of the Ministry of Justice. Any transactions affecting the owner's interest in the property are required to be registered with the Department. To register a transaction, the applicant must pay registration fees which vary depending on the type of transaction to be registered (e.g 0.5 per cent of the contract price for registering a conveyance). Once registered, the Department, through its computer database and manual filing system, updates the ownership information in accordance with the registration made.

11/ By entering into a lease with the government, the tenant establishes the ownership of the structures erected on the leased land.

12/ S/AC.26/1991/7/Rev.1.

13/ S/AC.26/1999/24 (the "F3 Report")

14/ See para.62 of the F3 Report. The "F3" Panel determined that increased transport costs arise because some of Kuwait's ports of entry remained closed until October 1991, during which time shipments were landed elsewhere and goods then transported to Kuwait over land. The types of insurance costs include all risks and public liability insurance.